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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MOHAMMAD A. TAVAKKOLY,

Plaintiff and Appellant,

v.

REAL TIME RESOLUTIONS, INC.,

Defendant and Respondent.

G055423

(Super. Ct. No. 30-2015-00821088)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed.

Whitecotton Law and Randal A. Whitecotton for Plaintiff and Appellant.

Reed Smith, Abraham Colman and Kasey J. Curtis for Defendant and Respondent.

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Plaintiff Mohammad Tavakkoly had two loans on his home: a primary mortgage, and a home equity line of credit (HELOC). In 2010, Bank of America N.A., modified the mortgage, and, according to Tavakkoly, falsely told him that the HELOC was consolidated into the new mortgage. It was not. In 2012, defendant Real Time Resolutions, Inc. (Real Time), began servicing the HELOC, though Tavakkoly never made payments on it. In November 2015, Tavakkoly sued both Bank of America N.A., and Real Time for intentional misrepresentation, negligent misrepresentation, accounting, and a violation of Business & Professions Code section 17200. The court granted summary judgment in favor of Real Time, finding the claims to be time barred. Tavakkoly appealed.

We affirm on an alternate ground briefed by the parties below: there was no evidence Real Time made an actionable misrepresentation in modifying the mortgage, nor was there any evidence Tavakkoly relied on any statements made by Real Time in asserting its right to collect payments on the HELOC.<sup>1</sup> Tavakkoly contends Real Time's act of attempting to collect on a nonexistent loan is a misrepresentation. But there is no evidence that Tavakkoly relied upon Real Time's assertion of its right to collect. The evidence is undisputed that Tavakkoly never made a payment to Real Time on the HELOC. Tavakkoly claims he made payment on the HELOC after Real Time's assertion of its right to collect by making payments to Bank of America N.A., on the modified mortgage. But that fact only bolsters the conclusion that he did not rely on Real Time's representations. Quite the opposite, he appears to have disbelieved them. Reliance is an essential element of the causes of action for negligent and intentional misrepresentation.

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<sup>1</sup> “As a corollary of the de novo review standard, the appellate court may affirm a summary judgment on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court.” (*California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22.)

Moreover, he offered no evidence that Real Time made any “misrepresentation” intentionally or negligently. In particular, there was no evidence that Real Time was aware of the alleged oral misrepresentation by Bank of America N.A., in 2010 that the HELOC was consolidated into the mortgage. Further, Tavakkoly admitted “that he did not speak to anyone at Real Time concerning a modification of the HELOC.” And he admitted that Real Time “likely did not play a part in the modification process” and that Real Time’s inclusion “was an error in the complaint.”

Tavakkoly’s Business and Professions Code section 17200 claim was derivative of the misrepresentation claims, and thus falls with them. And he does not challenge the court’s ruling on the accounting claim.

#### DISPOSITION

The judgment is affirmed. Real Time shall recover its costs incurred on appeal.

IKOLA, ACTING P. J.

WE CONCUR:

THOMPSON, J.

GOETHALS, J.